

MEMORANDUM

Agenda Item No. 4(E)

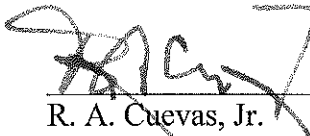
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance pertaining to First
Source Hiring Referral Program;
amending Chapter 2-2113 of the
Code to expand the program to
all County contracts; amending
Implementing Order No 3-58

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



R. A. Cuevas, Jr.
County Attorney

RAC/cp




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 4(E)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(E)
10-22-13

ORDINANCE NO. _____

ORDINANCE PERTAINING TO FIRST SOURCE HIRING
REFERRAL PROGRAM; AMENDING CHAPTER 2-2113 OF
THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO
EXPAND THE PROGRAM TO ALL COUNTY CONTRACTS;
AMENDING IMPLEMENTING ORDER NO 3-58; PROVIDING
SEVERABILITY, INCLUSION IN THE CODE, AND AN
EFFECTIVE DATE

WHEREAS, the average unemployment rate in Miami-Dade County (the "County") is
higher than the averages for the State of Florida and the United States; and

WHEREAS, unemployment and underemployment can contribute to significant social
and economic burdens on our community, including increased foreclosure rates, crime, and need
for costly social services; and

WHEREAS, the County awards millions of dollars in contracts each year, which results
in the creation of a wide variety of employment opportunities,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 2-2113 of the Code of Miami-Dade County, Florida, is hereby
amended as follows:¹

Sec. 2-2113. First Source Hiring Referral Program

- (1) Title. This section shall be referred to as the Miami-Dade County First
Source Hiring Referral Program.
- (2) Definitions. The following definitions shall apply to this
section:

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored
and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now
in effect and remain unchanged.

- A. "Implementing Order" or "IO" means the implementing order developed by the Mayor or Mayor's designee and approved by this Board of County Commissioners (the "Board") to give effect to the provisions of this Section.
- B. "County Contract" means an ~~an~~>>y Miami-Dade County<< agreement ~~[[for the purchase of goods and services specifically identified in the Implementing Order]]~~.

* * *

(6) Implementation

- A. The Mayor or Mayor's designee shall prepare and submit to the Board for approval, the Implementing Order which shall at a minimum:
1. Indicate that all County Contracts shall be subject to the requirements of this Section. The requirements of this Section shall be implemented to the maximum extent feasible ~~[[for all County purchases of goods and services]]~~.

* * *

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. Implementing Order ("IO") No. 3-58 which pertains to the First Source Hiring Referral Program shall be amended as indicated in the attached IO.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

garc

Prepared by:

dsh

David Stephen Hope

Prime Sponsor: Commissioner Barbara J. Jordan

I.O. No.: 3-58

Ordered:

Effective:

MIAMI-DADE COUNTY
IMPLEMENTING ORDER

FIRST SOURCE HIRING REFERRAL PROGRAM

AUTHORITY:

Sections 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter; and Section 2-2113 of the Code of Miami-Dade County

POLICY:

Except where federal or state laws or regulations mandate to the contrary, this Implementing Order shall require successful bidders of ~~[[goods and services]]~~¹ contracts prior to filling each vacancy arising under said County Contract, to first notify South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy so the contractors may post the vacancy with SFWIB. The contractor shall a) review the resumes and qualifications of the candidates, and b) make a good faith effort as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs under the County Contract from the First Source Register.

The provisions of this Implementing Order shall apply to all~~[[such goods and services]]~~ contracts including concessions and professional services entered into and issued by the County, its departments and agencies, except for: (i) ~~[[construction, construction management,]]~~ architectural, engineering, landscape architectural, and land surveying and mapping services; (ii) those covered under the Community Workforce Program ("CWP"); (iii) Section 3 Housing contracts; (iv) those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011); and (v) contracts where the funding source precludes inclusion of this requirement.

I. DEFINITIONS

- A. "Contractor" means any person or entity which enters into a County Contract, as defined below.
- B. "County" or "MDC" refers to Miami-Dade County.
- C. "County Contract" means an ~~an~~^{>>} Miami-Dade County~~<<~~ agreement ~~[[for the purchase of goods and/or services,]]~~ except as specified above.
- D. "First Source Register" means the register of unemployed persons maintained by the Referral Agency in accordance with the provisions of this Implementing Order.
- E. "Implementing Order" or "IO" means the implementing order developed by the Mayor or Mayor's designee and approved by the Board of County Commissioners (the "Board") to give effect to the provisions of this Section.
- F. "Issuing Department" means the County department issuing a solicitation~~[[for the purchase of goods and/or services]]~~.

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or ~~>>~~double arrowed~~<<~~ constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

- G. "Referral Agency" means the South Florida Workforce Investment Board, through its career centers, or community-based partners and faith-based organizations.
- H. "Referral Period" means the three (3) to five (5) day period following notification to the Referral Agency of employment availability.
- I. "SBD" refers to the Small Business Development under the Business Affairs Division of the Department of Regulatory and Economic Resources.

II. PROGRAM COMPONENTS

A. FIRST SOURCE REGISTER

The SFWIB shall compile and maintain a First Source Register, which shall be a listing of unemployed persons, including graduates of programs funded by the Workforce Investment Act, to be made available to Contractors as a first source for their employment needs. SFWIB does not discriminate on the basis of race, ethnicity, sex, residence, or other protected category or class, in the compilation or maintenance of the First Source Register, or in its referral activities provided for in this Section. SFWIB shall, to the extent allowed by law, maintain a database which identifies the race, ethnicity, sex, and residence of the persons within the First Source Register sufficient to permit adequate analysis of the available work force.

B. IMPLEMENTATION

The roll-out of the First Source Hiring Referral Program ("FSHRP") will be as follows:

1. Miami-Dade Aviation Department (August 2012)
2. Water and Sewer Department, Fire-Rescue, Public Works and Waste Management, Community Action and Human Services Department, Office of Management and Budget, Vizcaya (October 2012 beginning)
3. Internal Services Department, Information Technology Department, Transit, Miami-Dade Police Department, Public Housing and Community Development, Port of Miami, Library, Elections (October 2012 end)
4. Parks, Recreation and Open Spaces, Miami-Dade Corrections and Rehabilitation, Regulatory and Economic Resources, Community Information and Outreach, Cultural Affairs, Juvenile Services, Medical Examiner, Animal Services, Finance, Property Appraiser (November 2012)

C. REFERRAL PROCEDURE

The SFWIB shall be the first source for Contractors to fill jobs created to satisfy the requirements of County Contracts. The following requirements shall be included in all County Contracts, except those covered under the CWP, and except those covered under programs intended to encourage and assist in the employment of the blind and other severely handicapped persons such as described in Sections 413.032 - 413.037, Florida Statutes (2011):

1. The Contractor, prior to hiring to fill each vacancy arising under a County Contract, shall first notify the SFWIB of the vacancy by completing a Job Opening Form on the SFWIB First Source Hiring website (<https://iapps.southfloridaworkforce.com/firstsource/>). The job order shall contain a detailed description of the job responsibilities and qualifications, and be posted during the Referral Period of three (3) to five (5) days.
2. The SFWIB shall provide a list of qualified candidates, if such candidates are available, to the Contractor within twenty-four (24) hours of receiving a notice of vacancy. Thereafter, the Contractor shall (a) review the resumes and qualifications of the candidates, and (b) make a good faith effort, as determined by the County, to fill a minimum of fifty percent (50%) of its employment needs

under the County Contract from the First Source Register. If no suitable candidate is identified from the list, the Contractor shall provide an explanation to SFWIB via the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>). Notwithstanding the foregoing, if after the Referral Period a suitable employee is not found through the SFWIB, the Contractor is free to fill its vacancies from other sources.

3. A good faith effort to employ candidates from the SFWIB shall constitute, at a minimum, evaluating the qualification of such candidates, and conducting interviews with those candidates who satisfy the minimum competency requirements. The Contractor is not required to hire any individual candidate referred. However, Contractors shall not commit to fill vacancies in any other manner until after the end of the Referral Period, unless SFWIB notifies the Contractor in writing prior to the end of the Referral Period that qualified candidates are not available in sufficient numbers to fill the vacancies. Upon such notification, the Contractor may immediately fill vacancies using other sources.
4. In determining whether a Contractor has made good faith efforts, the County may consider, among other criteria: a) the number, skills and composition of the Contractor's labor force ultimately hired; b) whether minimum requirements were established for available positions beyond reasonable requirements to complete the job; c) the number of referred candidates interviewed for the position; and d) the Contractor's use of the First Source Register to satisfy its labor needs in contracts other than County Contracts. The County's determination as to whether a Contractor has made such good faith efforts is final and binding.
5. All competitive solicitations for County Contracts, except those covered under CWP, shall set forth the requirements of this Section. A link to the FSHRP web portal shall be on the Internal Services Department – Procurement Management Services Division's website.

D. ISSUING DEPARTMENT RESPONSIBILITIES

1. Notify SFWIB of County Contract awards, at both the award recommendation stage, and when the Contractor is notified by the County of the award in writing. Notification should include at a minimum:
 - a. Company Name.
 - b. Company Contact.
 - c. Contract Information.
 - d. Award Amount.
2. Include First Source requirement in applicable bid and contract documents.

E. SFWIB RESPONSIBILITIES

1. Notify prospective and awarded Contractors of the FSHRP.
2. Recruit qualified MDC residents:
 - a. Utilize existing database of job seekers.
 - b. Market new job opportunities to MDC residents.
 - c. Utilize Career Centers closest to the job seekers to recruit qualified residents interested in jobs to create a pool of candidates for FSHRP projects.
3. Create First Source Register:
 - a. Determine and complete candidate eligibility.
 - b. Assess job seekers to determine level of skills and training. Residents must meet all requirements of the Contractor prior to referral.
4. Refer qualified candidates that have requisite skills required by the Contractor.

5. Provide online web portal that allows Contractors the ability to submit required quarterly reports as described below under Section F (c) and (d).
6. Send system generated automated email "report due date" reminders to Contractors.
7. Provide MDC with real-time online access to Contractor quarterly status reports confirming whether the goals have been met and any non-compliance with the requirements of the ordinances and/or first source agreement.
8. Prepare quarterly reports for the Board which shall include: a) dollar amount of each contract; and b) an analysis of the effectiveness of the program during each quarterly reporting period.

F. CONTRACTOR RESPONSIBILITIES

- a. Prior to filling each vacancy under a County Contract, the Contractor shall notify SFWIB of all job openings and list the vacancy via the SFWIB web portal (www.southfloridaworkforce.com). The listing shall contain, at a minimum, a detailed description of the job responsibilities, qualifications, and wage rate. The listing must be posted during the Referral Period. As required, the Contractor shall work with the SFWIB to develop a workforce plan that details such information as (a) the number of individuals to be hired, (b) positions needed, (c) job description(s), and (d) skills needed for the job.
- b. Upon receipt of the list of qualified candidates from the SFWIB, the Contractor shall review resumes and qualifications of the candidates, and make good faith efforts as determined by MDC to fill a minimum of fifty percent (50%) of its employment needs under the County contract from the First Source Register. If none of the candidates are hired, the Contractor shall provide an explanation to SFWIB as to why not via the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>).
- c. Contractors shall provide quarterly reports to the SFWIB on-line through the FSHRP web portal (<https://iapps.southfloridaworkforce.com/firstsource/>) indicating: (a) the name and number of employees hired in the previous quarter; (b) the source from which such employees were found; (c) wages paid; and (d) total number of employee work hours. If none of the candidates referred are hired, an explanation as to why those referred were rejected must be included in the on-line report. Each quarterly report shall be submitted to SFWIB within two (2) weeks of the end of the quarter. Quarterly reports to the SFWIB are required from the Contractors, even if no vacancies are created or filled, for the duration of the contract or as determined by the SFWIB.
- d. Contractors shall retain sufficient records to assist in determining compliance. Records shall include, but are not limited to:
 - a. Notifications to SFWIB;
 - b. referrals from SFWIB;
 - c. job applications received from sources other than SFWIB; and
 - d. the number of candidates hired based on referrals from SFWIB.Said records shall be made available to SFWIB upon request, to the extent allowed by law.

G. MONITORING AND COMPLIANCE

1. SFWIB shall monitor quarterly reports submitted by Contractors and review Contractor records, to the extent allowed by law, to ensure compliance with the FSHRP. Referral Agency shall follow up with Contractors to ensure reporting requirements are met.

2. SFWIB shall be entitled to perform random, unannounced site visits to applicable project sites to determine whether or not Contractor has filled its vacancies.
3. SFWIB shall report to the County any non-compliance with the requirements of this ordinance, any related Implementing Order, or first source agreement between Referral Agency and Contractor.

III. SANCTIONS FOR VIOLATIONS

- A. Each County Contract shall include provisions stating the nature of the sanctions to be imposed on a Contractor that is not in compliance with this Section. Such sanctions shall include, but not be limited to the following:
 1. Suspension of contract until Contractor performs obligations, if appropriate.
 2. Default and/or termination.
 3. Payment of \$1,500 per employee, or the value of wages that would have been earned by employees injured by Contractor's non-compliance, whichever is less.
- B. If any Contractor attempts to comply with the provisions of FSHRP through fraud, misrepresentation or material misstatement, the County, in its sole discretion, may immediately terminate the subject County Contract.

IV. APPEALS PROCESS

- A. Any firm that is issued a determination of non-compliance with the requirements of this IO, its ordinance, or implementing bid documents may be appealed. SBD shall notify the affected party, in writing, setting forth the reasons for the determination and advising of the appeals process.
- B. The affected party may appeal the determination by filing a written appeal with SBD within fifteen (15) business days of receipt of the notice. SBD shall forward the appeal to the SFWIB Director upon receipt.
- C. PROCEDURES FOR ADMINISTRATIVE HEARING:
 1. SBD will schedule a hearing date before a hearing officer, upon timely receipt of a request for an administrative hearing along with a \$250 nonrefundable filing fee to appeal a determination of non-compliance with the requirements of this Implementing Order, Section 2-2113 of the Code of Miami-Dade County, or implementing bid documents.
 2. The prevailing party shall not incur any additional expenses, fees or penalties. The unsuccessful appellant shall be responsible for all additional fees, costs and penalties associated with the appeal.
 3. MDC shall serve upon the firm, Contractor (or subcontractor) a notice of hearing within five (5) working days of the appointment of the administrative hearing officer. Such notice shall include:
 - a. A copy of SBD's determination of non-compliance, as appropriate, outlining alleged prohibited practices upon which it is based; and
 - b. A description of the administrative penalties being considered.
 4. An administrative hearing shall be scheduled to be heard before an administrative hearing officer within twenty (20) days after service of the notice. The notice shall also advise the appellant that he or she may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them.
 5. Within five (5) days after completion of the administrative hearing, the administrative hearing officer shall transmit his/her findings of fact, conclusions, and recommendations together with a transcript of all evidence taken before him/her and all exhibits received by him/her, to the Mayor or designee, who (i) may sustain, reverse or modify the hearing officer's recommendations and (ii)

shall render a final decision, in writing. The determination of the Mayor may be reviewed by an appropriate court in the manner provided in the Florida Rules of Appellate Procedure.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency _____